

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 458700
Issued to: Frederick F. ENNO, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2147

Frederick F. ENNO, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 3 June 1977, an Administrative Law Judge of the United States Coast Guard at Tampa, Florida, suspended Appellant's seaman's documents for 2 months plus 6 months on 12 months' probation upon finding him guilty of negligence. The specifications found proved allege that while serving as First Class Pilot on board M/V ESTHER MORAN and tank barge NEW YORK under authority of the license above captioned, on or about 9 January 1977, during favorable weather, conditions, Appellant, while in charge of maneuvering said vessels, did (1) negligently allow NEW YORK to be maneuvered into the Tampa Electric Company pier, Tampa, Florida, thus causing a collision between the barge and the pier and damage both to the pier and to NEW YORK, and (2) negligently cause oil to be spilled into Sparkman Channel, Tampa, Florida, as a result of the aforementioned collision between NEW YORK and the Tampa Electric Company pier.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence excerpts of the deck log of ESTHER MORAN and seventeen other items of documentary evidence; and sworn testimony by an employee of the Tampa Electric Company, the Master, Chief Mate, and Second Mate of ESTHER MORAN, the Masters of the two tugs which were assisting in maneuvering the vessels at the time of the incident, as well as prior testimony by Appellant. All of the foregoing items of evidence, except one piece of documentary evidence, had been introduced or presented in the prior related proceeding against the license of the Master of ESTHER MORAN, Captain James L. Barrow, for his alleged negligence in connection with the property damage and oil pollution here in issue (see Decision on Appeal 2124). The reintroduction of that evidence by the Investigating Officer as the Coast Guard's case in the present matter was stipulated to both sides, providing, however, that Appellant would have further

opportunity to cross-examine the aforementioned witnesses with respect to their previous testimony.

In defense, Appellant offered his own testimony, the testimony of four other Tampa Bay pilots and of a tugboat Master employed by Gulf Coast Transit Co., and eighteen items of documentary evidence.

In rebuttal, the Investigating Officer recalled the Chief Mate and Second Mate of the ESTHER MORAN and also presented sworn testimony by the Executive Officer, MSO Tampa, and another Investigating Officer assigned to that command.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and two specifications had been proved. He then entered an order suspending all licenses issued to Appellant for a period of two months, plus six months on twelve months' probation.

The entire decision was served on 7 June 1977. Appeal was timely filed on 28 June 1977.

FINDINGS OF FACT

On the morning of 9 January 1977, Appellant was serving as a First Class Pilot on board the tug-barge flotilla M/V ESTHER MORAN/Tank barge NEW YORK and acting under the authority of his license while the vessels were in Tampa Bay, Florida. ESTHER MORAN is a motor vessel of 426 gross tons operated in the coastwise trade under a Consolidated Certificate of Enrollment and license. NEW YORK is a tank barge of 14,187 gross tons, also inspected and enrolled according to the laws of the United States. ESTHER MORAN is customarily employed in towing the barge NEW YORK in the coastwise petroleum trade between Texas and Tampa, Florida. Both vessels were, therefore, coastwise seagoing steam vessels, not sailing on register, operating in Tampa Bay, thus not on the high seas.

Employing the assistance of two local harbor tugs, Appellant had been assigned the task of maneuvering NEW YORK and ESTHER MORAN from their mooring at the Texaco/Marathon Terminal of Ybor Channel, a part of Tampa Bay, to the Amoco Terminal on Sparkman Channel, also a part of Tampa Bay. ESTHER MORAN had been made fast "in the notch" at the stern of NEW YORK, and her Master was at the helm. As directed by the Master, Appellant was stationed at the bow of the barge and exercised the "conn" of the barge-tug flotilla throughout the course of the maneuver, giving rudder, course, and engine orders to the Master by means of a portable transceiver. The two assisting tugs were also in constant communication with Appellant via transceiver. ESTHER MORAN's Chief Mate and Second

Mate, as well as four able-bodied seamen, were also present at various positions aboard the barge during the maneuver.

The weather condition at the time of the maneuver were favorable in all respects. Visibility was unlimited and there was no appreciable wind or current.

Due to the "light" status of NEW YORK, and the disparate configurations of ESTHER MORAN and the barge, the former's helm was situated at a level approximately 25 feet behind and below the deck of the barge, with the result that throughout the moving operation, ESTHER MORAN's Master's vision forward was entirely obstructed.

At approximately 0400 on the day in question, using the pulling power of the two local harbor tugs as well as the engine and rudder of the ESTHER MORAN, which were controlled by the latter's Master in accordance with orders given to him by transceiver, Appellant maneuvered the flotilla away from the Texaco/Marathon Terminal pier and onto the course heading necessary to navigate it down the Ybor Channel and through the Sparkman Channel to the Amoco Terminal. At approximately 0430, the flotilla collided with a section of the pier at the Tampa Electric Company, ripping a hole approximately fifteen feet long and two feet wide in the port bow of NEW YORK, about four feet above the water line, thereby resulting in the discharge of approximately 80,000 gallons of diesel fuel into the waters of Sparkman Channel and Tampa BAY. A substantial amount of structural damage was also caused to the pier by the force of collision. Just prior to the collision, the flotilla narrowly avoided colliding with SS REVERE at the latter's mooring in the Ybor Turning Basin at the entrance to Sparkman Channel just north of the Tampa Electric Company pier.

Throughout the period beginning with the flotilla's departure from the Texaco/Marathon Terminal and ending with its collision with the Tampa Electric Company pier, as well as during the short succeeding period which ended with the flotilla's arrival at the Amoco Terminal, ESTHER MORAN's steering and propulsion systems were functioning properly. Moreover, her lines to the barge were secure and taut, and her keel was and remained properly aligned with the keel of the barge.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant's basic contention on appeal is that the Coast Guard should be held to lack the requisite jurisdiction under 46 U.S.C. 239 to order suspension of the above-captioned license for the acts of negligence previously described, contending that he should be found to have been acting

under the authority of his state-issued pilot's license rather than his Coast Guard-issued Federal license when those acts of negligence took place. He bases this argument on the asserted unfairness of the classification made in Coast Guard licensing regulations and procedures pursuant to sections 211 and 364 of Title 46, U.S. Code, where by a state is permitted to regulate the pilotage of U.S. vessels on register and foreign flag vessels operating in its waters, but vessels of equally large size and similar types not on register and operating in the coastwise trade are required to be piloted by Federally-license pilots while underway in those same waters.

Alternatively, Appellant requests that the Administrative Law Judge's decision and order be affirmed so that, his administrative remedies having been formally exhausted, he may seek such further relief from the suspension order as may be available to him via in Federal court.

APPEARANCE: Lee S. Damsker, Esq., of GORDON & MANEY, P.A.,
Tampa, Florida.

OPINION

Both vessels involved here were "seagoing" within the meaning of 46 U.S.C. 364, operating as they were between a Texas port and Tampa Bay, and were, at the time, "not on the high seas." Neither was sailing "on register." The Tank Barge NEW YORK, a "steam vessel" under the provisions of R.S. 4417a (46 U.S.C. 391a) was, at the time in question, subject to the pilotage provisions of R.S. 4401 (46 U.S.C. 364). ESTHER MORAN, a "steam vessel" under the provision of R.S. 4399 (46 U.S.C. 361), was also at the relevant time subject to the same statute. The statute requires that, to be operated on the waters of Tampa Bay, both vessels be under the direction and control of a pilot duly licensed for such service under Federal regulations. Since Appellant was serving as that required pilot under authority of his license issued by the Coast Guard, the license is subject to suspension or revocation under R.S. 4450 (46 U.S.C. 239).

Appellant does not dispute the factual determinations establishing his negligence as stated in the charge and two specifications above, and a review of the record confirms clearly that substantial evidence was presented to support the findings of guilty made as to that charge and both counts thereof.

Appellant rightly concedes that the result reached in Decision on Appeal 2091 will, if followed here, require denial of his appeal and affirmance of the suspension of his license as ordered by the Administrative Law Judge, as the facts and issues involved in that

case were substantially the same as those here under consideration. There, a tank vessel licensed and enrolled for the coastwise trade was being navigated in the Carquinez Strait near Martinez, California, with the appellant on board and in charge as pilot, when the vessel collided with a charted fixed structure in the strait, the pier at the Ozol Wharf. The pilot was charged with and found guilty of negligence committed while acting under the authority of his Coast Guard-issued Master's license, which also bore a First Class Pilot endorsement, and his license was accordingly suspended by the Coast Guard pursuant to 46 U.S.C. 239. As one of the bases of his appeal, that appellant put forward the same argument which has been advanced here, that it is unjust for the Coast Guard to exercise its jurisdiction under sections 239 and 364 of Title 46, U.S. Code, with regard to the pilotage of coastwise seagoing steam vessels underway in United States waters, when it is precluded from doing so with regard to the pilotage of vessels of similar types and sizes, but sailing on register, being navigated in those same waters.

In Decision on Appeal No. 2091, I summarily rejected the foregoing argument by the appellant, stating that "[t]he jurisdictional authority of the Coast Guard in this case is clear." It is similarly rejected here. Appellant suggests no basis, other than asserted unfairness and injustice, as a rationale possibly militating in favor of a decision by the Coast Guard to refrain from exercising its Congressionally-mandated enforcement responsibility with respect to his license, pursuant to the statutory provisions just cited, and no valid basis for doing so is otherwise apparent. Whatever Appellant may think is unfair in the system established by Congress for the regulation of pilotage, it is not for the Coast Guard to refuse to exercise the authority conferred by the Congress for the better protection of vessel safety. Appellant's suggestion that Decision of Appeal No. 2091 be reconsidered and overruled must accordingly be declined.

CONCLUSION

As stated in the foregoing, the findings and conclusions made by the Administrative Law Judge pronouncing Appellant guilty of the charge and specifications above set forth were amply supported by substantial evidence of a reliable and probative nature. Appellant has not disputed those findings and conclusions. The jurisdiction, which he has challenged, is affirmed.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 3 June 1977 is AFFIRMED.

J.B. HAYES
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this EIGHTH day of JANUARY 1979.

INDEX

COLLISION

- negligence of pilot
- with charted fixed structure

JURISDICTION

- Federal and State pilot's licenses distinguished

NAVIGATION

- negligence in

NEGLIGENCE

- in causing oil spill
- presumption of, upon collision with charted fixed structure

PILOTS

- jurisdiction over

STATE PILOT

- licensing of, distinguished from Federal licensing